

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Michael Joseph Bergeron, Jr.

v.

Civil No. 18-cv-525-PB

State of New Hampshire
Town of Seabrook, New Hampshire

REPORT AND RECOMMENDATION

Plaintiff Michael Joseph Bergeron, Jr., proceeding in forma pauperis, has filed a Complaint, doc. No. 1, that is before this court for preliminary review, pursuant to LR 4.3(d) and 28 U.S.C. § 1915(e)(2).

I. Preliminary Review Standard

The magistrate judge conducts a preliminary review of pleadings filed in forma pauperis. See LR 4.3(d). The magistrate judge may recommend to the district judge that one or more claims be dismissed if, among other things, the court lacks jurisdiction, a defendant is immune from the relief sought, or the complaint fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2); LR 4.3(d). In conducting its preliminary review, the court construes pro se complaints liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). The complaint must contain sufficient factual matter, accepted as true, to state a claim to relief. Hernandez-Cuevas v. Taylor, 723 F.3d 91, 102 (1st Cir. 2013) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted)).

II. Background

Bergeron seeks to have unspecified criminal court cases and charges against him "dismissed, vacated and relieved." He also asserts that the Seabrook, New Hampshire, public school system failed to adequately prepare him to assert his constitutional rights. As a result, he alleges that he's been unlawfully and unconstitutionally charged with crimes, incarcerated and lost unspecified rights.

III. Analysis

A. Town of Seabrook

The court interprets Bergeron's claim against the Town of Seabrook as one for educational malpractice. As the First Circuit Court of Appeals has observed, however, "courts consistently have rejected students' claims of 'educational malpractice' against schools." Ambrose v. New Eng. Ass'n of Sch. and Colls., 252 F.2d 488, 499 (1st Cir. 2001) (citing Ross v. Creighton Univ., 957 F.2d 410, 414 n. 2 (7th Cir.1992) (collecting cases)); see also Montany v. Univ. of New Eng., No. 2:15-cv-89-JDL, 2016 WL 3566200, at *6 n.3 (D. Me. June 24, 2016) (noting lack of authority for educational malpractice claim).

B. State of New Hampshire

Whether the court construes Bergeron's allegations regarding his prior convictions as a civil rights claim against the State of New Hampshire under 42 U.S.C. § 1983 or as a claim for habeas corpus relief under 28 U.S.C. § 2254, the allegations in his complaint are vague and conclusory, averring only that he was unconstitutionally charged with crimes. The lack of specific facts prevents the court from reasonably inferring that he has asserted any colorable claim upon which relief can be granted. See Hernandez-Cuevas, 723 F.3d at 102.

IV. Conclusion

The district judge should dismiss this action in its entirety, based on the issues discussed herein. Any objections to this Report and Recommendation must be filed within 14 days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2); LR 7.2(d). The 14-day period may be extended upon motion. Failure to file objections within the specified time waives the right to appeal the district court's order. See Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016).



Andrea K. Johnstone
United States Magistrate Judge

December 3, 2018

cc: Michael Joseph Bergeron, Jr., pro se